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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

STATE OF CALIFORNIA and GAVIN  
NEWSOM, in his official capacity as Governor  
of California,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

Case No. 3:25-cv-03372-JSC

**DEFENDANTS' SUPPLEMENTAL BRIEF**

1 The Court should transfer this case—not dismiss it, as plaintiffs requested for the first time at the  
2 May 27, 2025 hearing. To start, in their brief, plaintiffs failed to make this request and argue that their  
3 desire for dismissal could change the “interest of justice” analysis under 28 U.S.C. § 1631. *See* ECF No.  
4 12. That failure means that plaintiffs forfeited their argument for dismissal in lieu of transfer. *Young v.*  
5 *ByteDance Inc.*, 700 F. Supp. 3d 808, 815 (N.D. Cal. 2023) (an argument omitted from an opposition  
6 brief is forfeited).

7 Regardless, courts in the Ninth Circuit “have rarely found that transfer would not serve the  
8 interest of justice” under 28 U.S.C. § 1631. *See Amity Rubberized Pen Co. v. Market Quest Grp. Inc.*,  
9 793 F.3d 991, 996 (9th Cir. 2015). Under section 1631, transfer is “normally” in the interest of justice  
10 because “dismissal of an action that could be brought elsewhere is ‘time-consuming and justice-  
11 defeating.’” *Sec. Alarm Financing Enters., L.P. v. Nebel*, 200 F. Supp. 3d 976, 987 (N.D. Cal. 2016)  
12 (quoting *Miller v. Hambrick*, 905 F.2d 259, 262 (9th Cir. 1990)). It undoubtedly would be time-  
13 consuming for plaintiffs to bring a piecemeal procedural appeal in the Ninth Circuit rather than litigate  
14 on the merits at the Court of International Trade with 12 of their sister states. *See, e.g., Taati v. Cigna*  
15 *Healthcare, Inc.*, 2008 WL 11423917, at \*7 (C.D. Cal. Sept. 19, 2008) (finding transfer under section  
16 1631 in the interest of justice to avoid “litigating [claims] piecemeal in two different forums,” which  
17 “would burden” the courts involved). Indeed, where the transferee court is already evaluating  
18 “markedly similar” “factual, legal, and procedural issues,” “transfer, not dismissal, is the preferable  
19 disposition.” *Amerijet Int’l, Inc. v. DHS*, 43 F. Supp. 3d 4, 21 (D.D.C. 2014); *Fitbit, Inc. v. Koninklijke*  
20 *Philips N.V.*, 336 F.R.D. 571, 587 (N.D. Cal. 2020) (explaining that transfer under section 1631 would  
21 “serve the interest of justice” in part because “a related ... action between the same parties” had already  
22 been transferred by another judge).

23 In addition, plaintiffs’ desire for an immediate appeal to the Ninth Circuit is not a reason to deny  
24 defendants’ motion based on the interests of justice. Congress determines the jurisdiction of the courts of  
25 appeals, and it decided against making transfer orders immediately appealable. Plaintiffs’ request would  
26 require this Court to hold that the interest-of-justice language in Congress’s transfer statute includes a  
27 judicial determination that the limits Congress placed on appellate jurisdiction are unjust. That sort of  
28 interpretation of section 1631 would defy logic and create a loophole to appellate jurisdiction. And the

Ninth Circuit has not held a plaintiff's desire for an appealable judgment relevant to the decision whether to transfer or dismiss a case. *See Amity*, 793 F.3d at 996. None of this denies plaintiffs review of the transfer order. As the U.S. District Court for the Northern District of Florida recently recognized in denying a motion premised on a need for Eleventh Circuit review, "Plaintiffs still have two more bites at the jurisdictional apple—at the CIT and, if necessary, at the Federal Circuit." *Emily Ley Paper Inc. v. Trump*, No. 3:25-cv-464, 2025 WL 1482363, at \*1 (N.D. Fla. May 21, 2025); *see also id.*, 2025 WL 1482771, at \*8 n.19 (May 20, 2025).

Plus, granting plaintiffs' request to dismiss their case is not likely to have the effect they desire. An order dismissing a case at a plaintiff's request is not appealable. Plaintiffs' "fundamental motivation in requesting a dismissal [is] to avoid the effects, and appeal the underlying basis, of an otherwise-unappealable interlocutory ruling that they [feel] would be damaging to their case: a transfer order. Courts do not favor this sort of end-run around the final judgment rule to make interlocutory orders immediately appealable." *Dearth v. Mukasey*, 516 F.3d 413, 416 (6th Cir. 2008) (dismissing an appeal of an order dismissing a case without prejudice at the plaintiff's request); *accord Hodgkins v. Mukasey*, 271 F. App'x 412, 414 (5th Cir. 2008) (same); *see Concha v. London*, 62 F.3d 1493, 1507 (9th Cir. 1995) (plaintiffs may not appeal from a voluntary dismissal without prejudice because "[t]he plaintiff is free to seek an adjudication of the same issue at another time in ... another forum"). In short, plaintiffs' desire for dismissal and piecemeal appeal circumventing the jurisdictional limits created by Congress cannot outweigh the Ninth Circuit's strong preference for transfer to a court with jurisdiction. *Amity*, 793 F.3d at 996.

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